

ADMINISTRATIVE-INTERNAL USE ONLY

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8 JUN 1974

MEMORANDUM FOR: Legislative Counsel

ATTENTION : Mr.

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SUBJECT : S. 3418, A Bill to Establish a Federal Privacy Board

1. Pursuant to your request dated 9 May 1974, we have reviewed the subject bill and offer the following comments:

a. S. 3418, introduced by Senator Ervin, proposes to create a Federal Privacy Board within the Executive Branch of the Government empowered to exercise certain authorities over personal information systems operated by Federal, State and local governments and private organizations. The bill is similar, but not identical, to H.R. 9786, a bill introduced in the House of Representatives on 1 August 1973 by Representative Koch.

b. From the standpoint of the Office of Security, it seems likely that should this bill be enacted into law there would be serious implications for our personnel security program. Our information gathering activities, including both field investigations and official liaison channels, would be adversely affected if the Office of Security personal information systems were not exempted from provisions of the bill. For example, if our investigators are unable to assure the confidentiality of information, interviewees may be reluctant to provide relevant and forthright testimony for fear that the subject of the inquiry may subsequently learn the source of adverse comments.

c. The various sub-sections of Title II, Section 201 of the bill could effectively combine to severely limit, if not actually terminate, the ability of this Office to continue to receive and disseminate the information essential to the security clearance process. In any event, the administrative

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burden that would be imposed by the recordkeeping/notification requirements of the bill [Section 201.(a)(9); Section 201.(d)(2)] would be awesome for the Office of Security and, with continuing manpower restraints, could degrade our ability to carry out our primary security mission.

d. Section 202.(1) of the bill grants an exemption to personal information systems "to the extent that information in such systems is maintained by a Federal agency, and the head of that agency determines that the release of the information would seriously damage national defense." In order to meet this test, it seems probable that the information in such systems would have to warrant the protection of a security classification under criteria established by Executive Order 11652 and the phrase "seriously damage the national defense" closely approximates the language of the Executive Order defining the test for use of a Secret classification.

e. While Section 202.(1) provides a basis for granting exemptions to individual systems, it appears that exemptions are obtained only after open public hearings before the Federal Privacy Board. It is also unclear as to whether each personal information system maintained by the Agency would be exposed to such a hearing, or whether one hearing would suffice for Agency systems collectively.

2. In summary, the mission of the Agency still intimately involves the accumulation and protection of information pertaining to national security and that mission will be made extremely difficult, if not impossible, to accomplish unless proposed legislation is tempered to this fact. The Office of Security position in regard to S. 3418 is that it should be opposed unless amendments specifically exempting the Agency, if not the entire Intelligence Community, are incorporated.

3. Please advise if we can be of further assistance in this matter.



Acting Director of Security

cc: DD/M&S

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